

**WISCONSIN DEPARTMENT OF TRANSPORTATION
WISCONSIN DEPARTMENT OF CORRECTIONS
WISCONSIN DEPARTMENT OF HEALTH AND FAMILY SERVICES**

**EVALUATION OF ALTERNATIVES TO INCARCERATION
FOR REPEAT DRUNKEN DRIVING**

PHASE 3: ANALYSIS/INTERPRETATION OF STUDY FINDINGS

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INTRODUCTION

Introduction

Study Background

This research project is being conducted as a result of the 1999 Wisconsin Act 109, Section 88 (1) that requires that:

“The Departments of Corrections, Health and Family Services and Transportation shall jointly study and evaluate the desirability of using treatment programs and other alternatives to incarceration as a way to reduce the length of incarceration or the need for incarceration of a person convicted of a second or subsequent violation of operating a motor vehicle while under the influence on an intoxicant, controlled substance or other drug.”

At the request of the above mentioned departments, The Dieringer Research Group (The DRG), acting as an independent research consultant, has been contracted to conduct the research study. Russell G. Brooker, Ph.D. is the study’s principal researcher and author. Laura M. Cleary is the Project Manager. Richard W. Yob is the Account Manager. The DRG recommended the Study of Evaluation of Alternatives to Incarceration for Impaired Driving to be conducted in three phases, as outlined below.

Phase One: Secondary Data Collection/Case History Development

Phase Two: Primary Data Collection

Step One: Milwaukee and Madison, Wisconsin

Step Two: Green Bay, Superior, Wausau, Eau Claire, and La Crosse, Wisconsin

Step Three: Statewide Quantitative Survey of Wisconsin

Phase Three: Analysis/Interpretation of Study Findings

This document presents the findings of Phase Three, the analysis and interpretation of study findings..

Study Research Objectives

Phase One:

- Review available research literature, public policy and program issues of practices of alternatives to incarceration for repeat impaired driving offenders nationwide.
- Identify examples of best practices including detailed case study profiles.

Phase Two:

- Identify the practices currently being utilized in Wisconsin as alternatives to incarceration for repeat impaired driving offenders in these categories:
 - Identify the practices currently being used in Wisconsin to reduce repeat drunk driving.
 - Assess the effectiveness of various measures in reducing repeat drunk driving.
 - Learn about the characteristics of drunk drivers in Wisconsin.
 - Obtain insight and advice about reducing drunk driving.

Phase Three:

- Assess and evaluate the effectiveness of the various measures designed to reduce repeat drunk driving

MAIN FINDINGS

Main Findings

This part of the research project summarizes all of the research from the study, including:

- Phase 1 of the study
 - The secondary research
 - Literature review of research studies and articles from around the United States and several foreign countries
- Phase 2 of the study
 - The primary research (Conducted entirely within Wisconsin)
 - Step 1: Four focus groups in Milwaukee and Madison (41 participants)
 - Step 2: Individual in-depth telephone interviews (15 respondents)
 - Step 3: Quantitative telephone survey (250 respondents)

One clear theme in the research is that there is no *alternative* to incarceration in reducing repeat drunk driving. There are many measures that can be effectively used in conjunction with incarceration or the threat of incarceration, but nothing can *replace* incarceration in the effort to reduce repeat drunk driving. Incarceration, or at least its threat, must always be present in any drunk driving program.

Another theme in the entire research project is the consistency of findings. The three primary research studies conducted in Wisconsin yielded very similar results. In addition, the results in the Wisconsin phase of the study tended to be consistent with the findings of the international literature review. However, there were some areas in which Phase 1 and Phase 2 results differed.

In this report, we will first identify the most important similarities in the findings of all four parts of the research project. Second, we will examine the most important differences between the secondary research in Phase 1 and the primary research in Phase 2. Finally, we will look at a series of specific measures one at a time and summarize the findings of the studies for those measures. Sometimes we will see similarities between the secondary and primary research findings, and sometimes we will see differences.

The Most Important Similarities of the Findings of the Literature Review (Phase 1) and the Primary Research (Phase 2)

The principal focus of practically all of the sources was rehabilitation of the drunk drivers. This focus was often framed as reducing recidivism or rehabilitating the drivers. There was little emphasis on keeping the offenders in jail so they are unable to drive or in punishing the offenders for the sake of retribution.

With that common focus, all four steps in the research had these conclusions in common:

- **Treatment** of the offender is the keystone to reducing repeat drunk driving. Offenders will not stop drinking and driving without some intervention aimed at breaking their relationship with alcohol.
- **Education** is also important. There was no consistent differentiation of treatment and education. What some sources called “treatment” others called “education.” In addition, many sources referred generically to “treatment and education.”

Main Findings

- **Swift action** is more important than severe penalties. It is more effective to intervene in the offender's life as soon as possible with treatment or education than to inflict harsh sanctions months later after an OWI conviction.
- An effective to reduce repeat drunk driving should have a **variety of measures available** — including treatment, education, and sanctions. No one measure works for all offenders, so the authorities should have an arsenal from which to choose.
- The authorities should use a **combination of measures for each offender**. No one measure, by itself, works well. The measures work to reduce repeat drunk driving when they are used in the proper combinations.
- There must be **sanctions** included with the treatment and education. Sanctions mean mainly jail or the threat of jail, but they also include fines, license suspension or revocation, and other measures. Sanctions are necessary because most repeat drunk drivers do not feel they need to change their lifestyles or simply do not want to change them. Sanctions, particularly jail, can be used effectively as a carrot or stick to compel them to participate in treatment and education. As a carrot, jail time can be reduced if an offender completes a treatment or education program. As a stick, an offender can be sent to jail for failure to complete a program.
- An **assessment** is vital to identify the particular needs of each offender. Without an assessment, the authorities cannot determine what measures will be effective for each offender.
- **Treatment should be individualized** as much as possible. Whatever works with one particular offender should be used with that offender. Just as there is no generic offender, there should not be generic treatment.
- **Close supervision or probation** is important in ensuring that the offenders participate in and complete treatment and education programs.
- **Jail terms** without treatment or education, even long jail or prison sentences, **are not effective by themselves** in reducing repeat drunk drivers. They do keep the offenders off the roads for the length of the jail terms, but they do not remove the offenders' desire to drink and drive.
- **Jail and prison space tends to be limited**. While locking up OWI offenders for long periods of time would remove them from the roads, the financial cost of incarceration would not be popular with taxpayers.

Main Findings

Differences Between the Secondary Research in Phase 1 and the Primary Research in Phase 2

There were very few important differences between the three parts of the primary research in Phase 2. However, there were some significant differences between the findings of the secondary research of Phase 1 and the primary research of Phase 2.

First, the results of Phase 1 and Phase 2 differed greatly on the effectiveness of sanctions based on driver's license suspension and revocation. The secondary sources in Phase 1 tended to emphasize the effectiveness of taking drunk drivers' licenses away from them. They especially favored Administrative License Suspension (ALS) in which the police officer at the scene of the OWI arrest takes the offender's driver's license and gives the offender a receipt that gives him a specific amount of time to deal with not having a license, such as obtaining an occupational license. These sources also favor especially harsh punishment of OWI offenders who get caught driving without a valid license.

However, the respondents in Phase 2 tended to dismiss the effectiveness of license-based sanctions. Many of them said suspending or revoking offenders' licenses is ineffective "because they drive anyway." Some pointed out that repeat drunk drivers have already shown their disregard for the law by driving drunk and are unlikely to respect a license suspension or revocation. Others pointed out that it is impossible to take the driver's license from many repeat drunk drivers because they have already lost their licenses from previous OWI infractions.

The Phase 2 respondents were divided on the effectiveness of harsh penalties for driving after losing the license. Some said that the state should inflict harsh punishment on OAR violators, but some said that the penalties are already severe enough and that treatment, not punishment, should be used.

Second, the secondary sources in Phase 1 tended to place more emphasis on fines than did the respondents in Phase 2. The secondary sources did not place the great emphasis on fines that they did on license suspension and revocation, but they tended to portray fines as more effective than the Wisconsin respondents did. Many Wisconsin respondents said that fines become so large for repeat drunk drivers that they cease to have much meaning. One respondent indicated that some repeat offenders are no more likely to pay extremely large fines than they are to win Academy Awards.

Third, the secondary sources and the Wisconsin respondents tended to place different emphases on the persistent drunk drivers. The secondary sources tended to emphasize that persistent drunk drivers are irrational and are not affected by normal sanctions and should be incapacitated from driving, either by locking them up or seizing or disabling their vehicles. The Wisconsin respondents agreed that persistent drunk drivers are not rational and are not affected by normal sanctions. But these respondents more often said that the authorities should make them rational through treatment and education so that they will learn to not drink and drive.

Main Findings

An important question is: Why the difference between Phase 1 sources and Phase 2 respondents? One reason is that the secondary sources in Phase 1 tended to involve quantitative studies, while the Wisconsin respondents were asked to comment from their knowledge and awareness of repeat drunk driving, not from any research studies they have seen. For example, an article in Phase 1 might find that by implementing a program of Administrative License Suspension (ALS) in one jurisdiction led to an 11% reduction in recidivism, while a similar jurisdiction that did not implement an ALS program saw a 3% rise in recidivism. The respondents in Phase 2 did not conduct such studies and would not be expected to see a percentage change of 14% (in this example) without doing so. That is, the effectiveness of ALS might be present in Wisconsin, but it would be extremely difficult to see it without conducting a study specifically for that purpose.

But another explanation seems more useful in explaining the differences between the Phase 1 and Phase 2 results. The Phase 1 studies concentrated on recidivism of all OWI offenders, while the Wisconsin respondents in Phase 2 were instructed to concentrate only on *repeat* OWI offenders. Such a difference in attention would cause very different evaluations of the effectiveness of many different OWI measures. This difference is caused mainly by the differences between first-time offenders and repeat drunk drivers.

The Phase 1 sources acknowledged differences between first-time offenders and repeat offenders, but most of the studies concentrated on recidivism without differentiating sharply between the two types of offenders. Consequently, the first-time offenders and the repeat offenders were mixed in studies. For example, if a new measure were introduced into one jurisdiction and recidivism dropped 15% while it rose 10% in a similar jurisdiction without that measure, the conclusion was made that the new measure led to lower recidivism. There was typically no attempt to show that recidivism was reduced X% among first-time offenders, Y% among second-time offenders, Z% among third-time offenders, and so on. Since the majority of offenders are first-time offenders (about 65% in Wisconsin), if a measure were effective with first-time offenders, it will probably be judged to be effective. A measure that was judged to significantly reduce recidivism, then, could be effective on first-time offenders and even second-time offenders—but could be completely ineffective on fourth-time or fifth-time offenders.

A researcher could conclude that a measure, such as a driver's license suspension, is effective in reducing recidivism even if it is ineffective in reducing recidivism among repeat drunk drivers. In other words, the apparent effectiveness of a measure may be due to its impact on the majority of drivers (the first-time offenders) which would overshadow its ineffectiveness with repeat drunk drivers.

Such a measure, of course, really is effective if it is effective for most drunk drivers. But the respondents in this study were not asked to comment on the effectiveness of measures for most drivers. They were asked to concentrate on repeat drunk drivers, and they did this. In their comments, it was clear that the respondents tended to divide the drunk driving population into two (or more) groups:

- The first-time offenders
- The repeat offenders

Main Findings

The respondents described the first-time offenders as “normal people” who probably had one drink too many. They are usually law-abiding upright citizens who got stopped. They represent all kinds of people and all strata of society, from very poor people to very wealthy people. They are usually humiliated at being arrested for drunk driving.

Many types of sanctions tend to work on the first-time offenders, including:

- Fines work because most of the first-time offenders have enough money to pay them—and do pay them, as well as the increased insurance premiums
- Jail or the threat of jail works because they are afraid of jail, and if they are incarcerated even for a short time, it is a very traumatic experience
- License suspension or revocation works because they feel very insecure driving without valid driver’s licenses.
- Harsh penalties for operating after license suspension or revocation (OAR) work because they feel they cannot afford to lose their licenses for long terms and are very reluctant to drive without them.
- Public humiliation works because they have good reputations in the community.

But for the typical repeat drunk drivers, who may have three, four, or more OWI arrests, these sanctions tend to not be effective:

- Fines do not work because the repeat offenders usually do not have enough money to pay them. If they have been fined for many OWI offenses, the total of the fines is too large to realistically consider paying.
- Jail does not work because they are accustomed to jail. They know they can survive jail.
- License suspension or revocation does not work because they usually do not have licenses. Even if they do, they are willing to drive without them.
- Harsh penalties for operating after license suspension or revocation (OAR) do not work because they do not expect to ever regain valid licenses and see occasional arrests as the cost of driving.
- Public humiliation does not work because they no longer have good reputations to uphold.

The Phase 2 respondents repeatedly said that one cannot attack the problem of repeat drunk driving without attacking the offenders’ need for alcohol. Unless the state is willing to shoulder the significant financial cost of locking away thousand of repeat drunk drivers, it needs to address the problem with a combination of treatment, education, supervision, and sanctions.

Main Findings

Evaluations of Specific Measures

In the research, several specific measures were examined. In this part of this report, we review these measures.

- Incarceration

Both the secondary and primary research emphasized the need for incarceration to give the offenders reasons to participate in treatment and educational programs. Both noted that incarceration alone does not change repeat drunk drivers' subsequent behavior. Both also noted that incarcerating offenders is very expensive and that locking up massive numbers of OWI offenders would not be popular with taxpayers.

- Fines

The secondary sources tended to portray fines as more effective than did the Wisconsin respondents in the primary research. However, the secondary sources did not show that larger fines are more effective than smaller ones. One advantage of fines in the secondary literature is that they place the costs of fighting drunk driving on the shoulders of the offenders.

Wisconsin respondents tended to have poor opinions of fines. Some said that large fines become irrelevant to repeat offenders. Some even said that large fines sometimes kept repeat offenders from seeking treatment by making them feel hopeless.

There were other differences between secondary sources and Wisconsin respondents in the primary research that are covered in the previous section.

- Driver's License Suspension or Revocation

There were major differences in the perceived effectiveness of license suspension or revocation between the secondary sources and the Wisconsin respondents. The secondary sources tended to place great emphasis on suspension and revocation, especially on administrative license suspension or revocation (ALS or ALR).

The Wisconsin respondents in Phase 2 of the study tended to dismiss license suspension and revocation as irrelevant to the struggle to reduce repeat drunk driving. Many respondents said of the repeat offenders, "They drive anyway." The difference between the secondary sources and the primary respondents is discussed in more detail in the next section of this report.

- Penalties for Operating a Vehicle After Suspension or Revocation (OAR)

Again, there were major differences between the secondary sources and the Wisconsin respondents. The secondary sources emphasized the need for harsh OAR penalties because they emphasized the effectiveness of license suspension and revocation. The Wisconsin respondents tended to be divided; some felt that penalties for OAR should be harsh, while others thought the penalties were already harsh enough. The differences between the secondary sources and Wisconsin respondents in the primary were discussed in more detail in the previous section.

Main Findings

- Home Confinement, or Electronic Monitoring

There was general, though not unanimous, approval for home confinement or electronic monitoring if it is used with a breathalyzer. Home confinement controls the movement and drinking of offenders, at a lower cost than jail, while allowing them to maintain their ties to their families and communities.

- Work Release (Huber Program)

There was also general approval for work release. The offenders are controlled and are available for treatment, but they are able to maintain some ties to the community and can provide incomes for their families.

- Community Service

The evidence for community service was mixed. No secondary sources showed evidence that it reduces recidivism, but some anecdotal evidence indicated that it may. In Wisconsin, many respondents did not have experience in using it, but some said that it is effective in reducing repeat drunk driving, while others said it requires too much supervision to be worthwhile.

- Victim Impact Panels

The secondary research was mixed about the effectiveness of Victim Impact Panels, but most Wisconsin respondents said they are effective, especially for first and second-time offenders.

- Alcoholics Anonymous

The secondary research on the use of Alcoholics Anonymous was ambiguous, but most Wisconsin respondents with experience using AA said it was effective for those offenders who want to use it.

- Seizing or Disabling the Vehicle

Both the secondary research and the primary research were mixed in terms of the effectiveness of seizing and disabling the offenders' vehicles. The secondary sources noted some successes for seizing vehicles but also pointed out some limitations. The focus group participants and individual interview respondents tended to dislike vehicle seizure or immobilization. However, the telephone survey respondents, except for the Court System respondents, tended to rate seizure and immobilization as reasonably effective.

- Ignition Interlock Device (IID)

Ignition Interlock Devices (IIDs) were given high ratings by both secondary sources and Wisconsin respondents. Those respondents with experience using IIDs said they are effective in preventing offenders from driving drunk while maintaining their jobs and family and community ties. However, IIDs do not tend to change offenders' behavior in the long run, and some respondents said that many offenders who are sentenced to use IIDs do not do so and some circumvent them.

Main Findings

- Special License Plates (Zebra Plates)

There was no evidence uncovered concerning the effectiveness of Zebra plates. The Wisconsin respondents, except for some Law Enforcement respondents in the telephone survey, had overwhelmingly negative feelings concerning them.

- Public Humiliation

There was no secondary evidence about the effectiveness of public humiliation of OWI offenders. Wisconsin respondents felt that attempts to humiliate drunk drivers, such as printing their names in newspapers, might be effective for first-time offenders but would not affect repeat offenders.

Main Findings

Conclusion

The original purpose of this research project was to explore alternatives to incarceration in dealing with repeat drunk driving. The research has shown there is not really an *alternative* to incarceration. Instead, the research has found that there are many complements to incarceration in reducing repeat drunk driving. Incarceration, or the threat of incarceration, must be a part of any effort to reduce repeat drunk driving.

The research has found that there is no generic OWI offender, and there should not be a generic solution. But the research points to some clear lessons and guidelines.

- Measures that are effective for first-time and second-time offenders generally are not effective for multiple repeat offenders. Specifically, while harsh sanctions alone may be effective for “normal” drivers involved in their first OWI offenses, they are seldom effective for drivers with several OWI offenses.
- The key to understanding and dealing with repeat drunk driving is alcohol. Any effort to reduce repeat drunk driving must concentrate on alcohol use and alcoholism.
- The effort to reduce repeat drunk driving must be centered on treatment and education. Repeat drunk drivers seldom see the need to stop driving drunk, and unless the state is prepared to house thousands of offenders in jails and prisons for long periods of time, those offenders must have their perspectives changed.
- Measures are more effective if they are undertaken quickly instead of waiting for convictions months after the arrests.
- An initial assessment needs to be conducted as soon as possible to determine the most appropriate measures. Treatment and education should be individualized as much as possible for each offender.
- The repeat drunk drivers must be supervised and monitored closely. They will not participate in, or complete, treatment or education programs without intensive supervision.
- Sanctions, especially jail, must be used to compel the offenders into program participation and completion.